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FACSIMILE COVER LETTER

To: Group Art Unit 1632
Firm: U.S. Patent and Trademark Office
Facsimile: (703) 872-9306
From: Thomas J. Kowalski (Reg. No. 32,147)
Deborah L. Lu (Reg. No. 50,940)
Date: December 30, 2003
Re: Application No. 09/591,737
FLH Reference No. 678503-2008.2
Number of Pages: 40
(including cover page)

If you do not receive all pages or are unable to read the transmission, please call and ask for Deborah Lu (Ext. 2088).

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Enclosed are the following documents for filing in connection with U.S. Application No. 09/591,737:

- (1) Information Disclosure Statement,
- (2) PTO 1449: List of References Cited by Applicant, and
- (3) U.S. Patent No. 5,543,328

Sincerely,

Deborah L. Lu
Deborah L. Lu
Registration No. 50,940

CONFIDENTIALITY NOTICE

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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CENTRAL FAX CENTER

Applicants : Curiel et al.
 Serial No. : 09/591,737
 Title : IMMUNOMODULATION BY GENETIC
 MODIFICATION OF DENDRITIC CELLS
 AND B CELLS
 Filed : June 12, 2000
 Examiner : Q. Janice Li
 Group Art Unit : 1632

FEB 27 2004
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I hereby certify that this paper is being facsimile transmitted to the
Patent and Trademark Office on the date shown below.

Deborah L. Lu, Reg. No. 50,940
Type or print name of
person signing certification

Deborah L. Lu
Signature

December 30, 2003

Date of Signature

INFORMATION DISCLOSURE STATEMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The Examiner's attention is respectfully directed to the document listed on the enclosed PTO-1449, namely U.S. Patent No. 5,543,328, which was cited in the Information Disclosure Statement during the prosecution of U.S. Patent Application No. 09/407,511 now U.S. Patent No. 6,284,742, of which the above-identified application is a continuation-in-part.

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This information disclosure is not a representation that the cited document is considered pertinent, or that the cited documents are indeed prior art.

The cited document herein, it is respectfully submitted, does not teach or suggest the instant invention. For instance, the cited document fails to teach or suggest a gene delivery system for CD-40 immune cells comprising a recombinant adenovirus and a component recognizing CD40 antigen comprising a first antibody, or antigen-binding fragment thereof, that binds to a fiber-known protein of said adenovirus, wherein said first antibody or antigen-binding fragment thereof is conjugated to a second antibody, or antigen-binding fragment thereof, that binds to CD40 antigen. In another example, the cited document fails to teach or suggest a genetically modified adenovirus having a fiber protein comprising CD40 ligand wherein the fiber shaft of said fiber protein is replaced by bacteriophage T4 fibritin protein and said CD40 ligand targets said vector to CD40.

Accordingly, it is believed that the document cited herein presents no new issues requiring any further search or examination.

It is respectfully requested that the Examiner consider and make of record the document herein cited and that a copy of Form PTO-1449 be initialed by the Examiner and returned to the undersigned. To the extent that a Petition is required for entry, this paper is to serve as such.

As this Information Disclosure Statement is being filed after payment of issue fee, the Commissioner is authorized to charge any required fees or credit any overpayment in fees to Deposit Acct. No. 50-0320.

And, in this regard, it is noted that the Rules and the MPEP do not prohibit the Examiner from considering and making of record documents cited at this stage of the prosecution.

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Between the Notice of Allowance and the grant of a U.S. Patent, at some point the application itself is removed from the Examining Art Unit and sent to the Publications Branch (the Office of Patent Publication) of the USPTO for actual printing. 37 C.F.R. § 1.97(i) provides that after the Notice of Allowance, the applicant does not have a right to have references cited in an IDS considered. Indeed, depending on timing, if the application is in the Publications Branch, the Examiner would have no way of knowing that an IDS had been filed.

On the other hand, if an IDS filed after the Notice of Allowance is received by an Examiner, and he decides (1) to consider each document, (2) initial the IDS to indicate that he has done so and (3) the documents cited are to appear on the front of the patent, there is nothing in 37 C.F.R. § 1.97(i) to prevent him from doing so, as is respectfully requested in this application. *See also* 37 C.F.R. §§ 1.181-1.183; namely that acceptance of this Information Disclosure Statement by the Examiner can be within 37 C.F.R. §§ 1.181-1.183, especially because non-acceptance of it can result in the Applicants requesting continued prosecution which can cause a loss of patent term.

The actions of the Examiner in considering each of the documents cited herein are consistent with the defined mission of the USPTO to help applicants get valid and enforceable patents on their Inventions. *See, e.g.,* 1998 USPTO Annual Report by then Commissioner Bruce A. Lehman available on the USPTO website at <http://www.uspto.gov/web/offices/com/annual/1998/a98r-2.htm#Topic11>, "The mission of the patent business area is to help our customers get patents; its performance goal is to grant patents to inventors for their discoveries."

And if in considering a document in an IDS filed after a Notice of Allowance, an Examiner determined that the document would establish a *prima facie* case of unpatentability of

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an allowed claim, the Examiner has authority to withdraw the Notice of Allowance, reopen the prosecution of the application and reject the claim on the recently cited document.

Indeed, 37 C.F.R. § 1.313(a) provides that “[a]pplications may be withdrawn from issue for further action at the initiative of the” USPTO. 37 C.F.R. § 1.313(b) further provides that the USPTO can withdraw an application from issue after payment of the issue fee due to, *inter alia*, unpatentability. Section 1308 of the MPEP provides that:

An application may be removed from the Office of Patent Publication, without it being withdrawn from issue under 37 CFR 1.313(b), to permit the examiner to consider an information disclosure statement or whether one or more claims are unpatentable. Only if such consideration results in a determination that one or more claims are unpatentable does 37 CFR 1.313(b) authorize the application to be withdrawn from issue. [emphasis added]

Thus, 37 C.F.R. § 1.97(i) does not prohibit the Examiner from considering an IDS that may not comply with 37 C.F.R. §§ 1.97 and 1.98, such as an IDS after allowance that may not comply with 37 C.F.R. §§ 1.97 and 1.98. Rather, 37 C.F.R. 1.97(i) is a procedural safeguard that prevents Applicants from expecting or insisting upon consideration of an IDS that may not comply with 37 C.F.R. §§ 1.97 and 1.98.

Therefore, it is respectfully requested under all of the Rules, including 37 C.F.R. §§ 1.181-1.183 that the documents cited herein be considered and made of record. The Examiner is invited to contact the undersigned by telephone at (212) 588-0800 should there be any questions.

Respectfully submitted,
FROMMER LAWRENCE & HAUG LLP
Attorneys for Applicants

By Deborah L. Lu
Deborah L. Lu
Registration No. 50,940
For: Thomas J. Kowalski
Registration No. 32,147
(212) 588-0800

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Based on Form PTO-1449 (3/90) LIST OF REFERENCES CITED BY APPLICANT (Use several sheets if necessary)			ATTY. DOCKET NO.		SERIAL NO.		
			678503-2008.2		09/591,737		
			APPLICANT				
			Curiel et al.				
FILING DATE June 12, 2000			GROUP 1632				
U.S. PATENT DOCUMENTS							
EXAMINER INITIAL		DOCUMENT NUMBER	DATE	NAME	CLASS	SUBCLASS	FILING DATE IF APPROPRIATE
	AA	U.S. 5,543,328	08/06/96	McClelland et al.			
	AB						
	AC						
	AD						
	AE						
FOREIGN PATENT DOCUMENTS							
		DOCUMENT NUMBER	DATE	COUNTRY	CLASS	SUBCLASS	TRANSLATION
	AF						YES
	AG						NO
	AH						
OTHER PRIOR ART (Including Author, Title, Date, Pertinent Pages, Etc.)							
	AJ						
	AJ						
	AK						
	AL						
	AM						
	AN						
	AO						
	AP						
	AQ						
	AR						
	AS						
	AT						
	AU						
	AV						
EXAMINER				DATE CONSIDERED			
* EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.							

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